

**REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS
OF SAN BERNARDINO COUNTY, CALIFORNIA
AND RECORD OF ACTION**

OCTOBER 29, 2002

FROM: MICHAEL E. HAYS, Director
Land Use Services Department/Advance Planning Division

**SUBJECT: ORDINANCE TO AMEND TITLE 8 OF THE COUNTY CODE RELATIVE
TO ACCESSORY WIND ENERGY SYSTEMS**

RECOMMENDATION:

- 1) **CONDUCT** public hearing to consider a proposed ordinance to amend Title 8 of the County Code relative to accessory wind energy systems;
- 2) **READ** title only of the proposed ordinance;
- 3) **WAIVE** reading of the entire text;
- 4) **ADOPT** the findings as recommended by the Planning Commission;
- 5) **ADOPT** the Negative Declaration;
- 6) **FILE** the Notice of Determination; and
- 7) **CONTINUE** to Tuesday, October 29, 2002, at 10:00 a.m. for adoption.

****Chairman directs staff to bring the issue before the Board if there are a series of complaints about visibility and height of wind energy systems.**

BACKGROUND INFORMATION: The recent shortage of a reliable electricity supply in California has caused the State legislature to take action relative to alternative sources of power. On October 7, 2001, the State adopted AB1207, which pertains to small wind energy systems, commonly referred to as "windmills" or "wind turbines." This bill became effective on July 1, 2002, and provides development standards for these systems for "non-urbanized" areas. It also allows any local agency to adopt an ordinance that establishes procedures and development standards for the installation of these systems within its jurisdiction. Such ordinance shall not be more restrictive than State law relative to notice, tower height, setbacks, turbine approval, and engineering analysis.

Along with this new law, the State has a "buy-down" incentive program that enables property owners to receive up to a 50% rebate on the installation of these systems. All of this has resulted in an increased interest in these systems by the general public who want to reduce their energy costs.

cc: LUSD-Hays
LUSD-Scott
LUSD-Squire
County Counsel-Cochran
ED/PSG-Cole
ED/PSG-Goss
File

nh

Record of Action of the Board of Supervisors

**APPROVED RECOMMENDATIONS 1-6; CONTINUED
FOR ADOPTION TO TUE, 11/5/02 @ 10 A.M.**

**BOARD OF SUPERVISORS
COUNTY OF SAN BERNARDINO**

MOTION	<u>MOVE</u>	<u>AYE</u>	<u>AYE</u>	<u>SECOND</u>	<u>ABSENT</u>
	1	2	3	4	5

J. RENEE BASTIAN, CLERK OF THE BOARD

BY _____

DATED: October 29, 2002

ORDINANCE TO AMEND TITLE 8 OF THE COUNTY CODE RELATIVE TO ACCESSORY WIND ENERGY SYSTEMS

October 29, 2002

Page 2 of 5

The new State law has prompted the County to reevaluate its provisions for these systems. Staff proposes to amend the County Development Code to provide more comprehensive regulations.

Current county provisions for small wind turbines are located in Chapter 4, Division 7 of the County Development Code under Height Regulations. These systems are an accessory use and are allowed through the issuance of a building permit. Current height limits in the Development Code are set at 52.5 feet (35 feet plus an increase of up to 50%) in Single Family (RS) and Multiple Residential (RM) Land Use Districts and 65 feet in all other districts.

The proposed ordinance creates a new section in Chapter 5, Division 4 (Accessory Uses) of the Development Code, which provides comprehensive standards for small wind turbines. Recognition of small wind turbines as accessory uses will continue to allow their installation with only a building permit as is currently provided for in the Development Code. This new section adds several standards that conform with State Law while being tailored to local conditions.

On July 25, 2002, staff presented a draft ordinance to the Planning Commission. After public discussion, the Commission continued the item to September 19, 2002, and directed staff to re-address certain provisions of the ordinance. The issues to be re-addressed were tower height, turbine color, setbacks, noise, and tower availability in urbanized areas. During the hearing on September 19th, the Commission included in their final recommendation: a) an increase tower heights to 100 feet in the Desert Region for parcels between 2.5 acres and 5 acres; b) to eliminate turbine camouflage requirements; c) to change the proposed setback limits to 100% of the tower height rather than the 125% currently required; d) retain the current noise standards, and e) retain current tower height standards (52.5 ft.) for the RS and RM Districts.

The proposed ordinance includes the following key provisions:

- **Tower Heights:** Allowable heights for the three regions of the County are as follows:

Land Use District	Valley Area	Mountain Area	Desert Area
RS and RM	52.5'	52.5'	52.5'
RL (on parcels less than 2.5 Acres)	65'	65'	80'
RL (on parcels 2.5 acres to less than 5 acres)	65'	65'	100'
RL- 5 or Greater, AG, RC	80'	80'	120'
All other districts	65'*	65'*	80'*

ORDINANCE TO AMEND TITLE 8 OF THE COUNTY CODE RELATIVE TO ACCESSORY WIND ENERGY SYSTEMS

October 29, 2002

Page 3 of 5

*Or the maximum structure height specified in the development standards for the land use district in which the system is located. The height limitation is applied to the tower only. The turbine and blades are not included.

State Law permits tower heights in non-urbanized areas up to 65 feet on parcels from 1 acre in size to less than 5 acres and 80 feet on parcels 5 acres or larger.

During the public hearing on September 19, 2002, concerns were brought up regarding the tower heights on parcels 2.5 acres to less than 5 acres in the Desert Region. Staff had recommended a height of 80 feet for the entire Rural Living (RL) Land Use District, which include parcel sizes up to 5 acres. Public testimony taken during the hearing proposed that the tower height should be increased from 80 feet to 100 feet on parcels between 2.5 acres and 5 acres in the Desert Region. The Commission incorporated the higher standards in their final action on the ordinance resulting in the standards shown in the preceding table of tower heights.

- **Noise:** The proposed ordinance requires that noise performance standards of Division 7 of the Development Code Title shall apply to these systems except during short-term events such as utility outages and severe windstorms. The current county standards are shown below. No new noise standards are required. State Law has a standard of 60 dBa from the turbine to the nearest inhabited dwelling. A noise study submitted to staff on a typical system documented that the system meets the current county standards. Therefore, staff does not believe a change to this standard is warranted.
 - Day: average of 55 dBa
 - Night: average of 45 dBa.
- **Setbacks:** The proposed ordinance conforms to the setback requirements confirmed in State Law. This requirement is 100% of the tower height from the property line rather than the 125% currently required in the Development Code.
- **System Certification:** The proposed ordinance provides that the system's turbine must be approved or have been approved by the California Energy Commission or certified by a national program recognized and approved by the Energy Commission. This is consistent with State Law requirements. Staff contacted the California Energy Commission (CEC) directly, and the CEC reports that turbine approval is required to ensure reliability and safety of the turbines used.
- **Structural Requirements:** The proposed ordinance requires that the tower shall be designed to meet the wind, seismic, and soil requirements prescribed by the Uniform Building Code and is consistent with the requirements stated in State Law.

ORDINANCE TO AMEND TITLE 8 OF THE COUNTY CODE RELATIVE TO ACCESSORY WIND ENERGY SYSTEMS

October 29, 2002

Page 4 of 5

- **Siting Limitations:** Consistent with the requirements of State Law, the proposed ordinance provides that a wind turbine shall not be allowed where otherwise prohibited by any of the following:
 - The Alquist-Priolo Earthquake Fault Zoning Act.
 - The terms of any easement.
 - The listing of the proposed site in the National Register of Historic Places or the California Register of Historical Resources.

The proposed ordinance requires that a wind turbine shall not be sited on land within a restricted military airspace without first giving adequate notice to the governing authority of that airspace. This is consistent with the provisions of State Law.

- **Notification:** The proposed ordinance requires that in the event a small wind energy system is proposed to be sited in an agricultural area that may have pest control aircraft operating at low altitudes, the applicant shall take reasonable steps to notify the operators. State Law includes a similar provision.
- **Camouflage:** Originally, staff recommended that the turbines be colored gray in order to better blend into the predominant viewing background and minimize the aesthetic impact. After receiving public testimony, the Planning Commission deleted this camouflage requirement from the ordinance. State Law has no provision for aesthetic or viewshed issues.

At the two Planning Commission hearings, approximately 14 different people testified primarily on tower height, noise, camouflage, setbacks, and the availability of small wind turbines in urbanized areas. The Commission concurred with some of the positions taken by the commentators and incorporated their suggestions on tower height and camouflaging into their final action as noted above.

FINDINGS:

1. An initial study was prepared for the proposed amendment, and it concludes that the proposed ordinance would have a less than significant impact on the environment with mitigation measures included within the ordinance and that a Negative Declaration should be prepared.
2. The Negative Declaration reflects the County's independent judgment and analysis.
3. The proposed Development Code Amendment is consistent with the goals and policies of the General Plan.

**ORDINANCE TO AMEND TITLE 8 OF THE COUNTY CODE RELATIVE TO
ACCESSORY WIND ENERGY SYSTEMS**

October 29, 2002

Page 5 of 5

REVIEW BY OTHERS: This ordinance was reviewed by Deputy County Counsel Robin Cochran on September 19, 2002 concurrently with the Planning Commission review. The Planning Commission recommended approval of the ordinance on September 19, 2002. This board item was reviewed by Deputy County Counsel Robin Cochran on October 8, 2002. The ordinance and board item were reviewed by the County Administrative Office, Patricia M. Cole, Administrative Analyst III, on October 9, 2002.

FINANCIAL IMPACT: N/A

SUPERVISORIAL DISTRICT(S): All

PRESENTER: Randy Scott, Division Chief - Advance Planning Division, 387-4147.